

than 100 employees.”¹²⁹ Thus, under this size standard, the majority of firms can be considered small.

61. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: “This U.S. industry comprises: (1) establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.”¹³⁰ The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: all such firms having \$9 million or less in annual receipts.¹³¹ According to Census Bureau data for 2007, there were 24,912 firms in this category that operated for the entire year.¹³² Of this total, 22,701 firms had annual sales of under \$5 million; 570 had annual sales and 533 firms had sales of \$5 million or more but less than \$10 million., and 1,641 had annual sales of over 10 million.¹³³ Thus, the majority of firms in this category can be considered small.

c. Wireline Carriers and Service Providers

62. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹³⁴ Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.¹³⁵ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.¹³⁶ Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the NPRM. Thus under this category, the majority of these incumbent local exchange service providers can be considered small.¹³⁷

63. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹³⁸ Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total,

¹²⁹ The NAICS Code for this service 334220. See 13 C.F.R 121/201. See also http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=500&-ds_name=EC0744SSSZ1&-_lang=en.

¹³⁰ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=443112&search=2007%20NAICS%20Search>.

¹³¹ 13 C.F.R. § 121.201, NAICS code 443112.

¹³² http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=500&-ds_name=EC0744SSSZ1&-_lang=en.

¹³³ *Id.*

¹³⁴ 13 C.F.R. § 121.201, NAICS code 517110.

¹³⁵ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

¹³⁶ See *id.*

¹³⁷ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

¹³⁸ 13 C.F.R. § 121.201, NAICS code 517110.

3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.¹³⁹ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.¹⁴⁰ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.¹⁴¹ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.¹⁴² In addition, 72 carriers have reported that they are Other Local Service Providers.¹⁴³ Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.¹⁴⁴ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

64. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁴⁵ Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities.¹⁴⁶ According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.¹⁴⁷ Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.¹⁴⁸ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

65. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁴⁹ Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered

¹³⁹ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁴⁰ See *Trends in Telephone Service*, at tbl. 5.3.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁴⁶ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁴⁷ See *Trends in Telephone Service*, at tbl. 5.3.

¹⁴⁸ *Id.*

¹⁴⁹ 13 C.F.R. § 121.201, NAICS code 517110.

small entities.¹⁵⁰ According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees.¹⁵¹ Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

66. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁵² Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.¹⁵³ Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.¹⁵⁴ Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.¹⁵⁵ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

67. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁵⁶ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000.¹⁵⁷ Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data,¹⁵⁸ 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed rules.

68. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁵⁹ Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these PSPs can be

¹⁵⁰ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁵¹ *Trends in Telephone Service*, at tbl. 5.3.

¹⁵² 13 C.F.R. § 121.201, NAICS code 517911.

¹⁵³ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁵⁴ See *Trends in Telephone Service*, at tbl. 5.3.

¹⁵⁵ *Id.*

¹⁵⁶ 13 C.F.R. § 121.201, NAICS code 517911.

¹⁵⁷ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁵⁸ *Trends in Telephone Service*, at tbl. 5.3.

¹⁵⁹ 13 C.F.R. § 121.201, NAICS code 517110.

considered small entities.¹⁶⁰ According to Commission data,¹⁶¹ 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

69. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶² Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.¹⁶³ Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.¹⁶⁴ Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.¹⁶⁵ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

70. *800 and 800-Like Service Subscribers.*¹⁶⁶ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (“toll free”) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶⁷ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.¹⁶⁸ Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.¹⁶⁹ According to our data for September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers;

¹⁶⁰ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁶¹ *Trends in Telephone Service*, at tbl. 5.3.

¹⁶² 13 C.F.R. § 121.201, NAICS code 517911.

¹⁶³ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁶⁴ See *Trends in Telephone Service*, at tbl. 5.3.

¹⁶⁵ *Id.*

¹⁶⁶ We include all toll-free number subscribers in this category, including those for 888 numbers.

¹⁶⁷ 13 C.F.R. § 121.201, NAICS code 517911.

¹⁶⁸ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=800&-ds_name=EC0751SSSZ5&-_lang=en.

¹⁶⁹ *Trends in Telephone Service*, at tbls. 18.4, 18.5, 18.6, 18.7.

5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

d. Wireless Carriers and Service Providers

71. Below, for those services where licenses are subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of a given auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

72. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.¹⁷⁰ Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”¹⁷¹ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.¹⁷² For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year.¹⁷³ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (“PCS”), and Specialized Mobile Radio (“SMR”) Telephony services.¹⁷⁴ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.¹⁷⁵ Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

73. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.¹⁷⁶ The SBA has approved these definitions.¹⁷⁷ The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that

¹⁷⁰ U.S. Census Bureau, 2007 NAICS Definitions, 517210 Wireless Telecommunications Categories (Except Satellite), <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

¹⁷¹ U.S. Census Bureau, 2002 NAICS Definitions, 517211 Paging, <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹⁷² 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

¹⁷³ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

¹⁷⁴ See *Trends in Telephone Service*, at tbl. 5.3.

¹⁷⁵ *Id.*

¹⁷⁶ Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS), GN Docket No. 96-228, *Report and Order*, 12 FCC Rcd 10785, 10879 ¶ 194 (1997).

¹⁷⁷ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

74. *Common Carrier Paging.* The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year.¹⁷⁸ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.¹⁷⁹ The 2007 census also contains data for the specific category of “Paging” “that is classified under the seven-number NAICS code 5172101.”¹⁸⁰ According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and 2 have more than 1,500 employees.¹⁸¹ Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action.

75. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).¹⁸² Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁸³ Census data for 2007 shows that there were 1,383 firms that operated that year.¹⁸⁴ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony.¹⁸⁵ Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.¹⁸⁶ Therefore, approximately half of these entities can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.¹⁸⁷ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500

¹⁷⁸ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

¹⁷⁹ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁸⁰ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=700&-ds_name=EC0751SSSZ5&-lang=en In this specific category, there were 248 firms that operated for the entire year in 2007. Of that number 247 operated with fewer than 100 employees and one (1) operated with more than 1000 employees. Based on this classification and the associated size standard, the majority of paging firms must be considered small.

¹⁸¹ See *Trends in Telephone Service*, at tbl. 5.3.

¹⁸² 13 C.F.R. § 121.201, NAICS code 517210.

¹⁸³ *Id.*

¹⁸⁴ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

¹⁸⁵ *Trends in Telephone Service*, at tbl. 5.3.

¹⁸⁶ *Id.*

¹⁸⁷ See *Trends in Telephone Service*, at tbl. 5.3.

employees.¹⁸⁸ Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

76. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.¹⁸⁹ For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹⁹⁰ These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.¹⁹¹ No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks.¹⁹² On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.¹⁹³ Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

77. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.¹⁹⁴ Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.¹⁹⁵ On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.¹⁹⁶ Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.¹⁹⁷ On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block

¹⁸⁸ *See id.*

¹⁸⁹ *See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824, 7850–52 ¶¶ 57–60 (1996) (“*PCS Report and Order*”); *see also* 47 C.F.R. § 24.720(b).

¹⁹⁰ *See PCS Report and Order*, 11 FCC Rcd at 7852 ¶ 60.

¹⁹¹ *See Alvarez Letter 1998.*

¹⁹² *See Broadband PCS, D, E and F Block Auction Closes*, Public Notice, Doc. No. 89838 (rel. Jan. 14, 1997).

¹⁹³ *See C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Fourth Report and Order, 13 FCC Rcd 15743, 15768 ¶ 46 (1998).

¹⁹⁴ *See C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

¹⁹⁵ *See Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

¹⁹⁶ *See Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

¹⁹⁷ *Id.*

Broadband PCS licenses in Auction No. 78.¹⁹⁸ Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.¹⁹⁹

78. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (“PCS”) licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.²⁰⁰ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.²⁰¹ A third auction of Narrowband PCS licenses was conducted in 2001. In that auction, five bidders won 317 Metropolitan Trading Areas and nationwide licenses.²⁰² Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

79. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.²⁰³ For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.²⁰⁴ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

80. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, the Commission adopted a small business size standard for

¹⁹⁸ See *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

¹⁹⁹ *Id.*

²⁰⁰ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000) (“*Narrowband PCS Second Report and Order*”).

²⁰¹ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

²⁰² See *Narrowband PCS Auction Closes*, Public Notice, 16 FCC Rcd 18663 (WTB 2001).

²⁰³ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

²⁰⁴ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

defining “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.²⁰⁵ This small business standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.²⁰⁶ A “very small business” is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.²⁰⁷ The SBA has approved these small size standards.²⁰⁸ Auctions of Phase II licenses commenced on and closed in 1998.²⁰⁹ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.²¹⁰ Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.²¹¹ A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.²¹² In 2007, the Commission conducted a fourth auction of the 220 MHz licenses.²¹³ Bidding credits were offered to small businesses. A bidder with attributed average annual gross revenues that exceeded \$3 million and did not exceed \$15 million for the preceding three years (“small business”) received a 25 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$3 million for the preceding three years received a 35 percent discount on its winning bid (“very small business”). Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007.²¹⁴ In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

81. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years.²¹⁵ The Commission awards very small business bidding credits

²⁰⁵ *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, Third Report and Order, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997).

²⁰⁶ *Id.* at 11068 ¶ 291.

²⁰⁷ *Id.*

²⁰⁸ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998 (*Alvarez to Phythyon Letter 1998*).

²⁰⁹ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (WTB 1998).

²¹⁰ See *FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made*, Public Notice, 14 FCC Rcd 1085 (WTB 1999).

²¹¹ See *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (WTB 1999).

²¹² See *Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

²¹³ See *Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72*, Public Notice, 22 FCC Rcd 3404 (2007).

²¹⁴ See *Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period*, Public Notice, 22 FCC Rcd 11573 (2007).

²¹⁵ 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

to entities that had revenues of no more than \$3 million in each of the three previous calendar years.²¹⁶ The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.²¹⁷ The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996.²¹⁸ Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.²¹⁹ The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.²²⁰ A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.²²¹

82. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.²²² In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.²²³ Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

83. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees.²²⁴ We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

84. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons.²²⁵ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground

²¹⁶ *Id.*

²¹⁷ *See Alvarez Letter 1999.*

²¹⁸ *FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas: Down Payments due April 22, 1996, FCC Form 600s due April 29, 1996, Public Notice, 11 FCC Rcd 18599 (WTB 1996).*

²¹⁹ *Id.*

²²⁰ *See Correction to Public Notice DA 96-586, FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas, Public Notice, 11 FCC Rcd 18637 (WTB 1996).*

²²¹ *See Multi-Radio Service Auction Closes, Public Notice, 17 FCC Rcd 1446 (WTB 2002).*

²²² *See 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced, Public Notice, 15 FCC Rcd 17162 (WTB 2000).*

²²³ *See 800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced, Public Notice, 16 FCC Rcd 1736 (WTB 2000).*

²²⁴ *See generally* 13 C.F.R. § 121.201, NAICS code 517210.

²²⁵ 13 C.F.R. § 121.201, NAICS codes 517210.

Radiotelephone Service licenses through competitive bidding, the Commission has defined “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$40 million.²²⁶ A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.²²⁷ These definitions were approved by the SBA.²²⁸ In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

85. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.²²⁹ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (“BETRS”).²³⁰ For purposes of its analysis of the Rural Radiotelephone Service, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²³¹ Census data for 2007 shows that there were 1,383 firms that operated that year.²³² Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms in the Rural Radiotelephone Service can be considered small.

86. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (“VHF”) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²³³ Census data for 2007 shows that there were 1,383 firms that operated that year.²³⁴ Of those 1,383, 1,368 had

²²⁶ *Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission’s Rules, Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service*, WT Docket Nos. 03-103, 05-42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663 ¶¶ 28-42 (2005).

²²⁷ *Id.*

²²⁸ See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, FCC (filed Sept. 19, 2005).

²²⁹ The service is defined in section 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

²³⁰ BETRS is defined in sections 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

²³¹ 13 C.F.R. § 121.201, NAICS code 517210.

²³² U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

²³³ 13 C.F.R. § 121.201, NAICS code 517210.

²³⁴ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

87. *Fixed Microwave Services.* Microwave services include common carrier,²³⁵ private-operational fixed,²³⁶ and broadcast auxiliary radio services.²³⁷ They also include the Local Multipoint Distribution Service ("LMDS"),²³⁸ the Digital Electronic Message Service ("DEMS"),²³⁹ and the 24 GHz Service,²⁴⁰ where licensees can choose between common carrier and non-common carrier status.²⁴¹ The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons is considered small.²⁴² For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year.²⁴³ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

88. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.²⁴⁴ There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that standard.²⁴⁵ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.²⁴⁶ Census data for 2007 shows that there were 1,383 firms that operated that year.²⁴⁷

²³⁵ See 47 C.F.R. Part 101, Subparts C and I.

²³⁶ See *id.* Subparts C and H.

²³⁷ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

²³⁸ See 47 C.F.R. Part 101, Subpart L.

²³⁹ See *id.* Subpart G.

²⁴⁰ See *id.*

²⁴¹ See 47 C.F.R. §§ 101.533, 101.1017.

²⁴² 13 C.F.R. § 121.201, NAICS code 517210.

²⁴³ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

²⁴⁴ This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001-22.1037.

²⁴⁵ 13 C.F.R. § 121.201, NAICS code 517210.

²⁴⁶ *Id.*

²⁴⁷ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&- (continued....)

Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

89. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.²⁴⁸ An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.²⁴⁹ The SBA has approved these small business size standards.²⁵⁰ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

90. *Wireless Cable Systems. Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”).²⁵¹ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.²⁵² The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.²⁵³ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.²⁵⁴ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and

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²⁴⁸ See Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, PP Docket No. 93-253, *Report and Order*, 12 FCC Rcd 18600 (1998).

²⁴⁹ *Id.*

²⁵⁰ See Letter to Kathleen O’Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

²⁵¹ *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131, PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589, 9593 ¶ 7 (1995).

²⁵² 47 C.F.R. § 21.961(b)(1).

²⁵³ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1500 or fewer employees.

²⁵⁴ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.²⁵⁵ Auction 86 concluded in 2009 with the sale of 61 licenses.²⁵⁶ Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

91. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.²⁵⁷ Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."²⁵⁸ For these services, the Commission uses the SBA small business size standard for the category "Wireless Telecommunications Carriers (except satellite)," which is 1,500 or fewer employees.²⁵⁹ To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007 shows that there were 1,383 firms that operated that year.²⁶⁰ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use the classifications "firms" does not track the number of "licenses".

92. In the 1998 and 1999 LMDS auctions,²⁶¹ the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.²⁶² Moreover, the Commission added an additional classification for a "very small business," which

²⁵⁵ *Id.* at 8296.

²⁵⁶ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

²⁵⁷ The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)–(6). We do not collect annual revenue data on EBS licensees.

²⁵⁸ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, (partial definition), www.census.gov/naics/2007/def/ND517110.HTM#N517110.

²⁵⁹ 13 C.F.R. § 121.201, NAICS code 517210.

²⁶⁰ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

²⁶¹ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

²⁶² See *LMDS Order*, 12 FCC Rcd at 12545.

was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.²⁶³ These definitions of “small business” and “very small business” in the context of the LMDS auctions have been approved by the SBA.²⁶⁴ In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

93. *218-219 MHz Service.* The first auction of 218-219 MHz spectrum resulted in 174 entities winning licenses for 594 Metropolitan Statistical Area (“MSA”) licenses. Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.²⁶⁵ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, the Commission established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.²⁶⁶ A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.²⁶⁷ These size standards will be used in future auctions of 218-219 MHz spectrum.

94. *24 GHz – Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category “Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees.²⁶⁸ To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007 shows that there were 1,383 firms that operated that year.²⁶⁹ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census’ use of the classifications “firms” does not track the number of “licenses”. The Commission believes that there are only two licensees in the

²⁶³ *Id.*

²⁶⁴ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

²⁶⁵ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

²⁶⁶ *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999) (“*218-219 MHz Report and Order and Memorandum Opinion and Order*”).

²⁶⁷ *Id.*

²⁶⁸ 13 C.F.R. § 121.201, NAICS code 517210.

²⁶⁹ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

24 GHz band that were relocated from the 18 GHz band, Teligent²⁷⁰ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

95. *24 GHz – Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.²⁷¹ “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.²⁷² The SBA has approved these small business size standards.²⁷³ These size standards will apply to the future auction, if held.

96. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.²⁷⁴ The second has a size standard of \$25 million or less in annual receipts.²⁷⁵

97. The category of Satellite Telecommunications “comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”²⁷⁶ Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.²⁷⁷ Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999.²⁷⁸ Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

98. The second category, i.e. “All Other Telecommunications” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in

²⁷⁰ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

²⁷¹ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 ¶ 77 (2000); see also 47 C.F.R. § 101.538(a)(2).

²⁷² *Id.*; see also 47 C.F.R. § 101.538(a)(1).

²⁷³ See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

²⁷⁴ 13 C.F.R. § 121.201, NAICS code 517410.

²⁷⁵ 13 C.F.R. § 121.201, NAICS code 517919.

²⁷⁶ U.S. Census Bureau, 2007 NAICS Definitions, 517410 Satellite Telecommunications.

²⁷⁷ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.

²⁷⁸ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.

this industry.²⁷⁹ For this category, Census Bureau data for 2007 shows that there were a total of 2,383 firms that operated for the entire year.²⁸⁰ Of this total, 2,347 firms had annual receipts of under \$25 million and 12 firms had annual receipts of \$25 million to \$49,999,999.²⁸¹ Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

e. Cable and OVS Operators

99. Because Section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers may not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

100. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."²⁸² The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year.²⁸³ Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

101. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.²⁸⁴ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.²⁸⁵ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.²⁸⁶

²⁷⁹ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>.

²⁸⁰ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.

²⁸¹ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.

²⁸² U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, (partial definition), <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110> (last visited Oct. 21, 2009).

²⁸³ U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-ds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.

²⁸⁴ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

²⁸⁵ These data are derived from: R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, TOP 25 CABLE/SATELLITE OPERATORS, pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, OWNERSHIP OF CABLE SYSTEMS IN THE UNITED STATES, pages D-1805 to D-1857.

²⁸⁶ 47 C.F.R. § 76.901(c).

Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.²⁸⁷ Thus, under this second size standard, most cable systems are small.

102. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”²⁸⁸ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.²⁸⁹ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.²⁹⁰ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²⁹¹ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

103. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.²⁹² The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.²⁹³ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,²⁹⁴ OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”²⁹⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees.

²⁸⁷ WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2008, U.S. CABLE SYSTEMS BY SUBSCRIBER SIZE, page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

²⁸⁸ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1–3.

²⁸⁹ 47 C.F.R. § 76.901(f); see, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

²⁹⁰ See BROADCASTING & CABLE YEARBOOK 2006, at A-8, C-2 (Harry A. Jessell ed., 2005) (data current as of June 30, 2005); TELEVISION & CABLE FACTBOOK 2006, at D-805 to D-1857 (Albert Warren ed., 2005).

²⁹¹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.909(b).

²⁹² See 47 U.S.C. § 573.

²⁹³ 47 U.S.C. § 571(a)(3)-(4). See *13th Annual Report*, 24 FCC Rcd at 606, ¶ 135.

²⁹⁴ See 47 U.S.C. § 573.

²⁹⁵ U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

Based on this data, the majority of these firms can be considered small.²⁹⁶ In addition, we note that the Commission has certified some OVS operators, with some now providing service.²⁹⁷ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.²⁹⁸ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.²⁹⁹ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

f. Internet Service Providers, Web Portals and Other Information Services

104. *Internet Service Providers, Web Portals and Other Information Services.* In 2007, the SBA recognized two new small business economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,³⁰⁰ and (2) All Other Information Services.³⁰¹

105. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,³⁰² which has an SBA small business size standard of 1,500 or fewer employees.³⁰³ These are also labeled “broadband.” The latter are within the category of All Other Telecommunications,³⁰⁴ which has a size standard of annual receipts of \$25 million or less.³⁰⁵ These are labeled non-broadband.

106. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396

²⁹⁶ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.

²⁹⁷ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

²⁹⁸ See *13th Annual Report*, 24 FCC Rcd at 606-07 ¶ 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

²⁹⁹ See <http://www.fcc.gov/mb/ovs/csovsr.html> (current as of February 2007).

³⁰⁰ 13 C.F.R. § 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

³⁰¹ 13 C.F.R. § 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

³⁰² U.S. Census Bureau, 2007 NAICS Definitions, 517110 Wired Telecommunications Carriers, <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

³⁰³ 13 C.F.R. § 121.201, NAICS code 517110.

³⁰⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications,” <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

³⁰⁵ 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

firms operated for the entire year, of which 159 had nine or fewer employees.³⁰⁶ For the second category, the data show that 1,682 firms operated for the entire year.³⁰⁷ Of those, 1,675 had annual receipts below \$25 million per year, and an additional two had receipts of between \$25 million and \$ 49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

107. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.³⁰⁸ The SBA deems businesses in this industry with 500 or fewer employees small.³⁰⁹ According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with to 999 employees.³¹⁰ Consequently, we estimate the majority of these firms are small entities that may be affected by our proposed actions.

108. *Data Processing, Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services.³¹¹ The SBA has developed a small business size standard for this category; that size standard is \$25 million or less in average annual receipts.³¹² According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year.³¹³ Of these, 6,726 had annual receipts of under \$25 million, and 155 had receipts between \$25 million and \$49,999,999 million.³¹⁴ Consequently, we estimate that the majority of these firms are small entities that may be affected by our proposed actions.

³⁰⁶ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5171103 (rel. Nov. 19, 2010) (employment size). The data show only two categories within the whole: the categories for 1-4 employees and for 5-9 employees.

³⁰⁷ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5179191 (rel. Nov. 19, 2010) (receipts size).

³⁰⁸ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=519130&search=2007%20NAICS%20Search>

³⁰⁹ http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.

³¹⁰ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1000&-ds_name=EC0751SSSZ5&-_lang=en.

³¹¹ U.S. Census Bureau, 2007 NAICS Definitions, "518210 Data Processing, Hosting, and Related Services"; <http://www.census.gov/naics/2007/def/ND518210.HTM#N518210>.

³¹² 13 C.F.R. § 121.201, NAICS code 518210.

³¹³ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1000&-ds_name=EC0751SSSZ4&-_lang=en.

³¹⁴ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1000&-ds_name=EC0751SSSZ4&-_lang=en.

109. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”³¹⁵ Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$7.0 million or less in average annual receipts.³¹⁶ According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.³¹⁷ Of these, 334 had annual receipts of under \$5 million, and an additional 11 firms had receipts of between \$5 million and \$9,999,999.³¹⁸ Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

110. We summarize below the recordkeeping and certification obligations of the *Report and Order*. Additional information on each of these requirements can be found in the *Report and Order*. Again, the *Report and Order* temporarily exempts all providers of ACS and manufacturers of ACS equipment that qualify as small business concerns under the SBA’s rules and size standards for the industry in which they are primarily engaged.

111. *Recordkeeping.* The *Report and Order* requires, beginning one year after the effective date of the *Report and Order*, that each manufacturer of equipment used to provide ACS and each provider of such services subject to Sections 255, 716, and 718 not otherwise exempt under the *Report and Order*, maintain certain records. These records document the efforts taken by a manufacturer or service provider to implement Sections 255, 716, and 718. The *Report and Order* adopts the recordkeeping requirements of the CVAA, which specifically include: (1) information about the manufacturer’s or provider’s efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access. Additionally, while manufacturers and providers are not required to keep records of their consideration of the four achievability factors, they must be prepared to carry their burden of proof, which requires greater than conclusory or unsupported claims. Similarly, entities that rely on third party solutions to achieve accessibility must be prepared to produce relevant documentation.

112. These recordkeeping requirements are necessary to facilitate enforcement of the rules adopted in the *Report and Order*. The *Report and Order* builds flexibility into the recordkeeping obligations by allowing covered entities to keep records in any format, recognizing the unique recordkeeping methods of individual entities. Because complaints regarding accessibility of a product or service may not occur for years after the release of the product or service, the *Report and Order* requires covered entities to keep records for two years from the date the product ceases to be manufactured or a service is offered to the public.

³¹⁵ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services”; <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

³¹⁶ 13 C.F.R. § 121.201, NAICS code 519190. *See also* http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf

³¹⁷ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1200&-ds_name=EC0751SSSZ4&-_lang=en.

³¹⁸ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=1100&-ds_name=EC0751SSSZ4&-_lang=en.

113. *Annual Certification Obligations.* The CVAA and the *Report and Order* require an officer of providers of ACS and ACS equipment to submit to the Commission an annual certificate that records are kept in accordance with the above recordkeeping requirements, unless such manufacturer or provider is exempt from compliance with Section 716 under applicable rules.³¹⁹ The certification must be supported with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the entity with personal knowledge of the representations provided in the company's certification, verifying the truth and accuracy of the information. The certification must be filed with the Consumer and Governmental Affairs Bureau on or before April 1 each year for records pertaining to the previous calendar year.

114. *Costs of Compliance.* There is an upward limit on the cost of compliance for covered entities. Under the CVAA and *Report and Order* accessibility is required unless it is not achievable. Under two of the four achievability factors from the Act and adopted in the *Report and Order*, covered entities may demonstrate that accessibility is not achievable based on the nature and cost of steps needed or the technical and economic impact on the entity's operation.³²⁰ Entities that are not otherwise exempt or excluded under the *Report and Order* must nonetheless be able to demonstrate that they conducted an achievability analysis, which necessarily requires the retention of some records. As discussed, the *Report and Order* contains a temporary exemption for small entities from compliance with Section 716 and Section 717, allows for waivers of the obligations of Section 716 and Section 717, and excludes customized equipment from the obligations of Section 716 and Section 717.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

115. The RFA requires an agency to describe any significant alternatives it considered in developing its approach, which may include the following four alternatives, among others: "(1) the establishment of differing compliance or certification requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and certification requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."³²¹

116. For rules adopted that impose some burden on small entities, the Commission considered alternatives where possible, as directed by the RFA. Most significantly, the Commission considered and adopted a temporary exemption for all small entities that qualify as small business concerns under the SBA's rules and size standards. Therefore, while some of the obligations of the *Report and Order* do impose a burden, small entities are generally relieved of these burdens. The rules we adopt in the *Report and Order* also promotes flexibility for entities that do not meet the small entity exemption. All entities may avoid compliance if accessibility is not achievable, may seek a waiver for products or services that are not designed primarily for ACS, and may keep records in any format. Further, in the accompanying *Further Notice* the Commission seeks comment on extending a permanent exemption for small entities. Despite this flexibility and the exemption for qualifying small entities, we discuss below the alternatives considered for rules that may impose a burden on small entities.

117. The rules require covered entities to ensure that products and services are accessible, unless not achievable. This is a statutory requirement, therefore no alternatives were considered. However, this requirement has built-in flexibility. All entities may demonstrate that accessibility is unachievable either through building accessibility features into the product or service or by utilizing third party solutions. Achievability is determined through a four factor analysis that examines: The nature and

³¹⁹ 47 U.S.C. 618(a)(5)(B).

³²⁰ See 47 U.S.C. § 617(g).

³²¹ 5 U.S.C. § 603(c)(1)-(c)(4).

cost of the steps needed to meet the requirements of Section 716(g) with respect to the specific equipment or service in question; the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies; the type of operations of the manufacturer or provider; the extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points. Through this analysis, an otherwise covered entity can demonstrate that accessibility is not achievable. We note that two of the four factors look at factors that are particularly relevant to small entities: the nature and cost of the steps need to meet the Section 716 requirements and the technical and economic impact on the entity's operations. Therefore, as explained further below, this achievability analysis provides a statutorily based means of minimizing the economic impact of the CVAA's requirements on small entities. Further, when accessibility is not achievable, covered entities must ensure that their products and services are compatible, unless not achievable. This again is a statutory requirement with built-in flexibility though the achievability analysis.

118. The rules require covered entities to consider performance objectives at the design stage as early and consistently as possible. This requirement is necessary to ensure that accessibility is considered at the point where it is logically best to incorporate accessibility. The CVAA and the *Report and Order* are naturally performance-driven. The CVAA and *Report and Order* avoid mandating particular designs and instead focus on an entity's compliance with the accessibility requirements through whatever means the entity finds necessary to make its product or service accessible, unless not achievable. This provides flexibility by allowing all entities, including small entities, to meet their obligations through the best means for a given entity instead of the Commission explicitly mandating a rigid requirement.

119. With respect to recordkeeping and certification requirements, these requirements are necessary in order to demonstrate compliance with the requirements of the *Report and Order* and CVAA and to facilitate an effective and efficient complaint process. As described above, we adopt flexible requirements that allow covered entities to keep records in any format they wish. In the *Report and Order*, we found that this approach took into account the variances in covered entities (e.g., size, experience with the Commission), recordkeeping methods, and products and services covered by the CVAA. Moreover, we found that it also provided the greatest flexibility to small businesses and minimized the impact that the statutorily mandated requirements impose on small businesses. Correspondingly, we considered and rejected the alternative of imposing a specific format or one-size-fits-all system for recordkeeping that could potentially impose greater burdens on small businesses. Furthermore, the certification requirement is possibly less burdensome on small businesses than large, as it merely requires certification from an officer that the necessary records were kept over the previous year; this is presumably a less resource intensive certification for smaller entities.

120. While ensuring accessibility and keeping records may impose some burdens, as discussed, the *Report and Order* includes significant flexibility for small entities. First, the achievability factors in the CVAA may mitigate adverse impacts and reduce burdens on small entities. Under the achievability factors as discussed above, an otherwise covered entity can demonstrate that accessibility is unachievable and therefore avoid compliance. The first and second factors are particularly relevant to small entities and the special circumstances they face. The first factor considers the nature and cost of the steps needed to meet the requirements with respect to the specific equipment or service in question, and the second considers the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question. If achievability is overly expensive or has some significant negative technical or economic impact on a covered entity, the entity can show that accessibility was not achievable as a defense to a complaint.

121. The *Report and Order* also includes significant relief for small and other entities including a temporary exemption from the obligations of Section 716 and Section 717 for qualifying small entities, waiver criteria under which all covered entities may seek a waiver of the obligations of Section 716, and an exemption for customized equipment. Under the *Report and Order*, customized

equipment offered to businesses and other enterprise customers is expressly exempt. Additionally, all providers and manufacturers, or classes of providers and manufactures, are able to seek a waiver for equipment or services that are capable of accessing ACS. These two provisions allow any entity, including small entities, to avoid the burden of compliance with the accessibility and recordkeeping requirements if they meet the requirements for either provision.

122. Further, while we could have opted to not exercise our discretionary authority to exempt small entities, we found that even in the absence of meaningful comments regarding whether to grant a permanent small entity exemption, there was good cause to provide temporary relief and avoid imposing an unreasonable burden upon small entities and negatively impacting the value they add to the economy. In the *Report and Order*, we therefore decided some exemption is necessary to provide relief to those entities for which even conducting an achievability analysis would consume an unreasonable amount of resources. Finding good cause for granting such relief, the *Report and Order* temporarily exempts ACS providers and ACS equipment manufacturers that qualify as small business concerns under the SBA's rules and size standards.

123. Specifically, the *Report and Order* temporarily exempts entities that manufacture ACS equipment or provide ACS that, along with any affiliates, meet the criteria for a small business concern for their primary industry under SBA's rules and size standards.³²² A small business concern, as defined by the SBA, is an "entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor."³²³ Entities are affiliated under the SBA's rules when an entity has the power to control another entity, or a third party has the power to control both entities,³²⁴ as determined by factors including "ownership, management, previous relationships with or ties to another concern, and contractual relationships."³²⁵ A concern's primary industry is determined by the "distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year,"³²⁶ and other factors including "distribution of patents, contract awards, and assets."³²⁷ The *Report and Order* stated that if an entity no longer meets the exemption criteria, it must comply with Section 716 and Section 717 for all subsequent products or services or substantial upgrades of products or services that are in the development phase of the product or service lifecycle, or any earlier stages of development, at the time they no longer meet the criteria. The temporary exemption will begin on the effective date of the rules adopted in the *Report and Order*³²⁸ and will expire the earlier of the effective date of small entity exemption rules adopted pursuant to the *Further Notice of Proposed Rulemaking* ("Further Notice") or October 8, 2013.

124. This exemption enables us to provide relief to those entities that may possibly lack legal, financial, or technical capability to comply with the Act until we further develop the record to determine whether small entities should be subject to a permanent exemption and, if so, the criteria to be used for defining which small entities should be subject to such permanent exemption. To that end, we seek further comment on the standards for a permanent exemption in the accompanying *Further Notice*.

³²² 13 C.F.R. §§ 121.101 – 121.201.

³²³ 13 C.F.R. § 121.105(a)(1).

³²⁴ 13 C.F.R. § 121.103(a)(1).

³²⁵ 13 C.F.R. § 121.103(a)(2).

³²⁶ 13 C.F.R. § 121.107.

³²⁷ 13 C.F.R. § 121.107.

³²⁸ See accompanying *Report and Order* at Section III.A.5.

G. Federal Rules that May Duplicate, Overlap, or Conflict with Proposed Rules

Section 255(e) of the Act, as amended, directs the United States Access Board (“Access Board”) to develop equipment accessibility guidelines “in conjunction with” the Commission, and periodically to review and update those guidelines.³²⁹ We view the Access Board’s current guidelines as well as its draft guidelines³³⁰ as starting points for our interpretation and implementation of Sections 716 and 717 of the Act, as well as Section 255, but because they do not currently cover ACS or equipment used to provide or access ACS, we must necessarily adapt these guidelines in our comprehensive implementation scheme. As such, our rules do not overlap, duplicate, or conflict with either Access Board Final Rules,³³¹ or (if later adopted) the Access Board Draft Guidelines. Where obligations under Section 255 and Section 716 overlap, for instance for accessibility requirements for interconnected VoIP, we clarify in the *Report and Order* which rules govern the entities’ obligations.

³²⁹ 47 U.S.C. § 255(e).

³³⁰ United States Access Board, *Draft Information and Communication Technology (ICT) Standards and Guidelines*, (March 2010), (“Access Board Draft Guidelines”), <http://www.access-board.gov/sec508/refresh/draft-rule.pdf>.

³³¹ See Part 1193 of the Access Board Rules, 36 C.F.R. Part 1193.

35